

Federal Communications Commission

DA 99-2186

OCT 18 10 04 AM '99

Before the
 DISPATCHED Federal Communications Commission
 Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),

Table of Allotments,

FM Broadcast Stations.

(Monahans and Gardendale, Texas)

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MM Docket No. 99-302

RM-9727

NOTICE OF PROPOSED RULE MAKING

Adopted: October 6, 1999

Released: October 15, 1999

Comment Date: December 6, 1999

Reply Date: December 21, 1999

By the Chief, Allocations Branch

1. Before the Commission for consideration is a Petition for Rule Making filed on behalf of Capstar Royalty II Corporation ("Capstar"), proposing the reallocation of Channel 271C from Monahans, Texas, to Gardendale, Texas. Capstar also requests modification of its license for Station KCDQ, Monahans, to be modified to specify operation at Gardendale. Capstar failed to state its intention to apply for Channel 271C if it is reallocated to Gardendale, as requested, and should do so in response to this Notice. Failure to provide such commitment could result in the denial of the request. See the Appendix to this Notice.

2. Capstar filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, Capstar states that Channel 271C may be allotted to Gardendale consistent with the Commission's separation requirements and places a city-grade signal over the entire city of Gardendale in accordance with Section 73.315 of the Commission's Rules. Further, the proposed reallocation will provide Gardendale with its first local transmission service, thus fulfilling Priority 3 of the Commission's allotment priorities. Capstar contends that retention of the channel in Monahans triggers Priority 4 because full-time AM Station KLBO and FM Station KGEE will continue to be licensed to Monahans. In further support of its request, Capstar points out that Gardendale, Texas, is defined as a Census Designated Place (CDP) with a population of 1,103 people in 424 households according to the 1990 U.S. Census. Moreover, Gardendale has its own post office and zip code

(79758), volunteer fire department, several churches, schools and assorted businesses. Additionally, Capstar states that the KSDQ transmitter site will remain unchanged, so there will be no decline in the station's service area or number of listeners reached and the station will continue to provide city grade coverage to the community of Monahans. Capstar also states that the reallocation will not remove service from a rural area to serve an urban area as Gardendale is not located within a U.S. Census Urbanized Area.

3. We believe Capstar's proposal warrants consideration since the reallocation of Channel 271C from Monahans, Texas to Gardendale, Texas, could provide the community of Gardendale with its first local aural transmission service under our allotment priorities.¹ In addition, the proposed reallocation and change of community of license to Gardendale would not result in a loss of local service to Monahans since Stations KLBO(AM) and KGEE(FM) are licensed to the community. A staff engineering analysis has determined that Channel 271C can be allotted to Gardendale in compliance with the Commission's minimum distance separation requirements at Capstar's specified site.² As requested, we shall also propose to modify the license for Station KCDQ to specify operation on Channel 271C at Gardendale, Texas, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 271C at Gardendale.

4. In view of the fact that the proposed allotment would provide a first local service to Gardendale, Texas, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 271C to Gardendale. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Monahans and Gardendale, as follows:

Community	Channel No.	
	Present	Proposed
Monahans, Texas	260C1, 271C	260C1
Gardendale, Texas	-----	271C

¹ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3)]. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

² The coordinates for Channel 271C at Gardendale are 31-57-55 and 102-46-10. Although Gardendale is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican government to the reallocation of Channel 271C from Monahans to Gardendale is not required since Station KCDQ is not changing its assigned channel of operation or relocating its transmitter site. However, in the event this proposal is granted, the Mexican government will be advised of the change to the FM Table of Allotments at the conclusion of this proceeding.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **December 6, 1999**, and reply comments on or before **December 21, 1999**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Gregory L. Masters
E. Joseph Knoll III
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D. C. 20006

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 445 Twelfth Street, S.W., Washington, D. C.